

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK (BROOKLYN)

-----: :
: :
UNITED STATES OF AMERICA, : Case No.: 1:23-CR-0191
Plaintiff, : Brooklyn, New York
: May 2, 2023
v. : :
: :
TAESUNG KIM, DACHENG LU, :
Defendants.:
-----:

TRANSCRIPT OF ARRAIGNMENT PROCEEDINGS
BEFORE THE HONORABLE CHERYL L. POLLAK
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For Government: UNITED STATES ATTORNEY'S OFFICE
EASTERN DISTRICT OF NEW YORK
BY: Patrick J. Campbell, AUSA
271-A Cadman Plaza East
Brooklyn New York 11201

For Defendant: KEVIN K. TUNG, PC
Taesung Kim BY: Kevin K. Tung, Esq.
136-20 38th Avenue
Flushing, New York 11354

For Defendant: FEDERAL DEFENDERS OF NEW YORK
Dacheng Lu BY: Michael K. Schneider, Esq.
One Pierrepont Plaza
Brooklyn, New York 11201

Proceedings recorded by electronic sound recording;
Transcript produced by transcription service

1 MR. CAMPBELL: Patrick J. Campbell for the
2 United States. Good afternoon, Your Honor.

3 THE COURT: Good afternoon.

4 MR. TUNG: Kevin Tung on behalf of Taesung
5 Kim.

6 THE COURT: Good afternoon.

7 MR. TUNG: Good afternoon, Your Honor.

8 MR. SCHNEIDER: Federal Defenders by Michael
9 Schneider for Mr. Lu. Good afternoon.

10 THE COURT: Good afternoon.

11 Mr. Kim and Mr. Lu, we are using the
12 services of interpreters to assist you in
13 understanding these proceedings. If at any point
14 something is said that you don't understand, please
15 let me know.

16 Okay. Mr. Lu, do you understand?

17 DEFENDANT LU: Yes.

18 THE COURT: Okay. I think we need to swear
19 in the interpreters, please. I'm not sure if they've
20 been previously sworn, but we need to have her state
21 her appearance anyway.

22 (Interpreters sworn)

23 THE INTERPRETER: Lisa Lu, Mandarin
24 interpreter. (Inaudible)

25 THE COURT: All right. Thank you very much.

1 All right. Mr. Kim and Mr. Lu, we are here
2 today because the grand jury has returned an
3 indictment charging you in three counts.

4 The first count charges you with conspiracy
5 to commit healthcare fraud. The second count charges
6 you with conspiracy to pay healthcare kickbacks. And
7 the third is a money laundering conspiracy.

8 Mr. Kim, have you seen a copy of the
9 indictment?

10 DEFENDANT KIM: Yes, I do.

11 THE COURT: Okay. Have you had an
12 opportunity to review it with your attorney?

13 DEFENDANT KIM: Yes.

14 THE COURT: Okay.

15 Mr. Tung, did you review the indictment with
16 your client and advise him of his rights?

17 MR. TUNG: Yes, Your Honor.

18 THE COURT: Okay. And do you have any
19 concern about whether he understands the charges in
20 the indictment?

21 MR. TUNG: Not at this moment in time.

22 THE COURT: Okay. Is he prepared to enter a
23 plea today?

24 MR. TUNG: Yes, not guilty plea.

25 THE COURT: To all three counts, I assume?

1 MR. TUNG: That's correct, Your Honor.

2 THE COURT: Okay. And, Mr. Lu, have you
3 seen a copy of the indictment?

4 DEFENDANT LU: Yes.

5 THE COURT: Okay. And did you have an
6 opportunity to review the charges with Mr. Schneider,
7 your attorney?

8 DEFENDANT LU: Yes.

9 THE COURT: Okay. Mr. Schneider, have you
10 reviewed the charges in the indictment, and was your
11 client advised of his rights?

12 MR. SCHNEIDER: Yes, I have. I will waive a
13 formal reading of the charges. Mr. Lu will plead not
14 guilty to each of the three counts.

15 THE COURT: Thank you.

16 Now, Mr. Kim and Mr. Lu, you have the right
17 to be represented by an attorney in connection with
18 these proceedings and all other proceedings going
19 forward in this case.

20 Now, I understand, Mr. Kim, you have
21 retained counsel, Mr. Tung, to represent you. If,
22 for some reason, you cannot afford to pay for counsel
23 in the future, the Court will appoint an attorney to
24 represent you because you have the right to be
25 represented by counsel. Do you understand that?

1 DEFENDANT KIM: Yes.

2 THE COURT: Okay. And, Mr. Lu, the Court
3 has appointed Mr. Schneider to represent you for
4 purposes of these proceedings and all other
5 proceedings.

6 MR. SCHNEIDER: Your Honor, during the
7 pre-trial interview, it became, sort of, obvious to
8 me that Mr. Lu may not qualify for appointed counsel.
9 He has not retained anyone, however. He -- I did not
10 have him sign a financial affidavit. I told him I
11 assumed I would be appointed for purposes of
12 arraignment and going forward with bail, but then he
13 (inaudible)

14 THE COURT: Okay. Thank you for that.

15 So Mr. Schneider tells me that, although
16 he's been appointed to represent you today for
17 purposes of this arraignment and bail proceeding,
18 depending upon your finances, you may be required to
19 retain your own attorney. In other words, you do not
20 qualify financially for court-appointed counsel. Do
21 you understand that?

22 DEFENDANT LU: Yes.

23 THE COURT: So that means between now and
24 your next court appearance before the District Judge
25 in this matter, you need to find yourself an

1 attorney. Do you understand that?

2 DEFENDANT LU: Yes.

3 THE COURT: Okay. But I want you to
4 understand that you are entitled to an attorney in
5 connection with all proceedings relating to these
6 charges. Do you understand that?

7 MR. LU: Yes.

8 THE COURT: Okay. I also want both of you,
9 Mr. Kim and Mr. Lu, to understand that you have the
10 right to remain silent. What that means is that you
11 do not have to say anything relating to these charges
12 to anyone. And, in fact, if you start to say
13 something, you can stop at any time. I want to make
14 sure that you understand that anything you say --
15 except what you say to your attorneys, anything else
16 could be used against you in this case.

17 Do you understand that, Mr. Kim?

18 DEFENDANT KIM: Yes.

19 THE COURT: Mr. Lu, do you understand that?

20 DEFENDANT LU: Yes.

21 THE COURT: Okay. All right. All right,
22 let's talk -- well, first of all, when -- do we have
23 a date for the defendants to appear before Judge
24 Gonzalez?

25 MR. CAMPBELL: Your Honor, it's been

1 reassigned to Judge Ross, and the date is June 12th.

2 THE COURT: Okay. All right. So --

3 MR. CAMPBELL: Yeah, it's -- excuse me. I'm
4 just going to grab the time.

5 June 12th at 11:00 a.m.

6 THE COURT: June 12 at 11:00 a.m. Okay.

7 All right. So let's address the question of
8 bail. Let's start with Mr. Lu. What's the
9 government's position with respect to bail for
10 Mr. Lu?

11 MR. CAMPBELL: Your Honor, the government
12 agrees with Pretrial that a substantial secured bond
13 is appropriate. The parties have a consent
14 application for a bond amount of \$1 million secured
15 by the defendant's real property in Great Neck. And
16 the government requests the additional conditions
17 recommended by Pretrial: Defendant reports to
18 Pretrial as directed. Travel restricted to New York
19 City and Long Island. Surrender a passport. Do not
20 apply for any additional travel documents. Be
21 subject to random home and employment visits. And
22 have no contact with co-defendants outside the
23 presence of counsel.

24 THE COURT: Okay. And I guess my question
25 is, is Ms. Song, his wife, in the courtroom?

1 MR. SCHNEIDER: She is, Your Honor. Should
2 I have her step to the podium?

3 THE COURT: Yes, please.

4 MR. SCHNEIDER: Your Honor, she needs a
5 Mandarin interpreter as well.

6 THE COURT: Okay.

7 (Ms. Song sworn)

8 THE COURT: Okay. All right.

9 MS. SONG: Sara Song.

10 THE COURT: All right. Good afternoon,
11 Ms. Song. You can put your hand down.

12 I understand that you are here willing to
13 sign a bond on behalf of your husband, Mr. Lu.

14 MS. SONG: Yes.

15 THE COURT: I want to make sure you
16 understand what your responsibilities are if, in
17 fact, you do sign this bond.

18 MS. SONG: Okay.

19 THE COURT: The bond is in the amount of
20 \$1 million. And to secure the bond, you are going to
21 be posting your home at (address redacted).

22 MS. SONG: Okay.

23 THE COURT: Do you own that home with
24 Mr. Lu?

25 MS. SONG: Yes.

1 THE COURT: All right. And do you have any
2 idea how much that home is worth?

3 MS. SONG: 1.7.

4 THE COURT: Okay. So if Mr. Lu decides not
5 to come back to court at any point when he's required
6 to be here, the bond will be revoked, he will be
7 rearrested, and at that point, he will be held in
8 jail until the trial on these charges.

9 MS. SONG: Okay.

10 THE COURT: What will happen to you if you
11 agree to sign this bond and he does not appear is
12 that the government can come after you for the amount
13 of the bond. That's the \$1 million. What that means
14 is they can seize your home up to the \$1 million
15 amount. And if your home is not worth \$1 million at
16 that time, the government can seize any other assets
17 that you might have, such as a car, bank account,
18 stocks, bonds -- anything like that -- to reach that
19 \$1 million amount.

20 Do you understand that?

21 MS. SONG: Yes.

22 THE COURT: And if you don't have assets
23 that equal that amount, but you're working, the
24 government can garnish your wages. What that means
25 is, every time you get your paycheck, the government

1 will automatically take a certain amount out of your
2 paycheck until that \$1 million amount is reached.

3 MS. SONG: Yes.

4 THE COURT: Do you understand that?

5 MS. SONG: Yeah, I understand.

6 THE COURT: Okay. Are you currently
7 employed?

8 MS. SONG: Yes.

9 THE COURT: What do you do for a living?

10 MS. SONG: Customer care, and also billing
11 for a company.

12 THE COURT: Okay. And approximately how
13 much would you say you earn a year?

14 MS. SONG: Around \$10,000.

15 THE COURT: Okay. So you understand that,
16 by signing this bond, you're telling the Court that
17 you are willing to take responsibility for your
18 husband?

19 MS. SONG: Yes.

20 THE COURT: You're going to make sure that
21 he makes all of his court appearances, and if he
22 doesn't, you understand you could lose up to
23 \$1 million. Do you understand that?

24 MS. SONG: Yes.

25 THE COURT: Knowing all of that, are you

1 willing to sign this bond on behalf of Mr. Lu?

2 MS. SONG: Yes.

3 THE COURT: Okay.

4 So, Michelle, do you want to have her
5 sign -- oh, actually, I probably need it back, but --
6 while she's signing the bond, Mr. Lu, I want to make
7 sure --

8 MR. SCHNEIDER: Do you want me to get the
9 interpreter to come over?

10 THE COURT: Yeah. Sorry. Okay. Wait.
11 I'll wait until she's finished with Ms. Song.

12 So, Mr. Lu, you've heard what will happen to
13 your wife if you fail to come back to court when
14 you're required to be here. You understand that,
15 right? She will lose the house.

16 DEFENDANT LU: I understand.

17 THE COURT: Okay. What will happen to you
18 if you don't come back to court is, as I said before,
19 you will be rearrested, and at that point, you'll be
20 held in jail until these charges are resolved. Do
21 you understand that?

22 DEFENDANT LU: Yes.

23 THE COURT: You also understand that if you
24 don't come back to court, the government could bring
25 additional charges against you for the separate crime

1 of bail jumping. That's a separate felony offense,
2 carries its own separate term of imprisonment. And
3 what that means is you could actually be acquitted or
4 found not guilty of the charges in the indictment
5 and, yet, end up going to jail simply because you
6 didn't come to court when you were required to be
7 here. Do you understand that?

8 DEFENDANT LU: Yes.

9 THE COURT: Okay. You also are not to
10 commit any other crimes while on bond. If you commit
11 a crime -- if you commit a crime while on bond,
12 that's grounds for revoking your bond, increasing
13 your punishment under the existing charges, and
14 bringing new charges against you for whatever new
15 crime you are alleged to have committed.

16 You are also not to threaten or attempt to
17 influence the testimony of any person who you think
18 might be a witness against you in this case. If you
19 do that, that's grounds for revoking your bond,
20 increasing your punishment under the existing
21 charges, and bringing charges against you for witness
22 tampering or obstruction of justice.

23 Do you understand?

24 DEFENDANT LU: Yes.

25 THE COURT: Okay. Also, as a condition of

1 the bond, you are to post the property -- do we have
2 a date by which we're going to get this property
3 posted?

4 MR. SCHNEIDER: I think we could do it by
5 Friday.

6 THE COURT: By Friday?

7 MR. SCHNEIDER: Yeah.

8 THE COURT: So that's May --

9 MR. SCHNEIDER: 5th.

10 THE COURT: -- 5th. Okay.

11 MR. CAMPBELL: No objection, Judge.

12 THE INTERPRETER: Your office, your
13 assistant is going to tell him where to --

14 MR. SCHNEIDER: We are going to tell him
15 what to do.

16 THE INTERPRETER: Okay. Before Friday,
17 right?

18 MR. SCHNEIDER: Yes. By tomorrow, we will
19 get you the documents.

20 THE INTERPRETER: Okay.

21 THE COURT: In addition, you must report to
22 Pretrial Services when and where they direct you.
23 You are to surrender any passports that you might
24 have.

25 Do we know --

1 MR. SCHNEIDER: Passport was seized by
2 agents this morning.

3 THE COURT: Okay. But I'm going to order
4 you not to apply for any new passport or travel
5 documents until these charges are resolved. Do you
6 understand that?

7 DEFENDANT LU: Yes.

8 THE COURT: Your travel is restricted to
9 New York City and Long Island. If you have to go
10 somewhere else, you need to get permission first from
11 Pretrial Services. Do you understand that?

12 DEFENDANT LU: Yes.

13 THE COURT: Okay. Also, you are not to have
14 any contact with your co-defendant, Mr. Kim, or any
15 victims or potential witnesses.

16 Mr. Schneider, are you aware of who those
17 might be, or if there's some arrangement that the
18 government is going to give you a list of those
19 people?

20 MR. SCHNEIDER: We -- I have not discussed
21 it aside from -- I don't have a list of unindicted
22 co-conspirators. But if they want to give me a list,
23 I can share it with Mr. Lu.

24 MR. CAMPBELL: We can do that, Your Honor.

25 THE COURT: Okay. All right. Thank you.

1 And, finally, there's another provision in
2 the Pretrial -- which I don't see on the bond, so I
3 don't know if it's been discussed, and that is that
4 he is to refrain from filing any claims, directly or
5 indirectly, to the Medicare and/or Medicaid programs.
6 Was that something that was addressed?

7 MR. SCHNEIDER: I agree to any conditions
8 that were recommended by Pretrial.

9 THE COURT: Okay. I'm just going to add
10 that at the bottom.

11 All right. Have I missed any provisions?

12 MR. CAMPBELL: No, Your Honor. Just two
13 requests; one, that we ask that the portion of the
14 transcript referencing his specific address be
15 sealed. And second, we understand him to be a
16 citizen of the People's Republic of China. Just so
17 the record is clear, notice was given this afternoon.

18 THE COURT: Okay. So the transcript with
19 his address shall be sealed. And maybe we can get
20 his signature.

21 While she's doing that, Counsel, do you want
22 to tell me what the government's position is with
23 respect to Mr. Tung -- Mr. Kim? Sorry. Excuse me.

24 MR. CAMPBELL: Your Honor, as outlined in
25 our submission dated today, which was provided to

1 defense counsel in the court, we are seeking
2 detention. I am in receipt of the Pretrial Services
3 report, which I think raises some additional
4 questions.

5 The government's principal concern is the
6 weight of the charges, the weight of the evidence
7 here, and particularly the defendant's access to
8 substantial assets and cash. It was a central part
9 of the scheme that significant amounts of
10 reimbursement from these pharmacies was turned into
11 cash. And so our concern is that there are
12 undisclosed assets that the government is not aware
13 of.

14 As we pointed out, the home he's currently
15 residing in was moved shortly after a series of
16 searches were conducted in December. We have some
17 concerns that the information given to Pretrial is
18 incomplete. It does not appear that he had
19 acknowledged his work at the pharmacies that are part
20 of the charge scheme or any related pharmacies and
21 entities. He declined to discuss his financials at
22 all.

23 And with respect to his wife, who he reports
24 as a housewife, she is the record owner of several of
25 these pharmacies, and is also a signatory on several

1 of the bank accounts.

2 So, from our view, we feel he's a
3 substantial flight risk. He had travel plans this
4 week to Korea. And as we pointed out in our letter,
5 we've also obtained information from several
6 witnesses who proffered with the government that
7 there have been attempts to influence their testimony
8 and implicitly suggest that they should not speak to
9 the government.

10 So for those reasons, we also feel he poses
11 a danger to the community and, potentially, witnesses
12 in this case.

13 THE COURT: All right. Mr. Tung, I assume
14 you have seen the government's submission?

15 MR. TUNG: Yes, Your Honor, and I do have
16 response -- responses. Okay.

17 First of all, that my client immigrated into
18 the United States in 1995, and he has settled with
19 his family. His children are settled in the United
20 States for close around 30 years, right? Close to 30
21 years. And all of his members, all of his community
22 ties are in the United States. There is no risk of
23 flight. And he has nothing to do -- I mean, he
24 wouldn't have anything -- any connections in Korea,
25 which -- South Korea, where he emigrate from.

1 And the government raises concern that he
2 might go in -- go back to his country or other --
3 outside of country. But, Your Honor, I have to point
4 it out to you, my client was aware of the
5 investigation since last year. He was subpoenaed to
6 appear before grand jury to give testimony. And I
7 remember because I was the attorney to represent the
8 company just to coordinate with government for
9 providing testimony with grand jury. And the
10 government scheduled him to appear before grand jury
11 to give testimony. And, however, it was the
12 government who canceled the appearance before grand
13 jury to give testimony.

14 Now, this is good indication for my client
15 because he never intended to -- all I'm saying is he
16 never intend to flee. He wanted to come in to give
17 his side of story, to give -- at that time, of
18 course, there's no allegations against him yet, but
19 while he voluntary -- no, while he under the
20 subpoena, he wanted to go to court to tell the grand
21 jury his side of the story. Then government changes
22 their side stories.

23 So what I'm saying, he wants to defend
24 himself in this country. He's not going to go away.

25 And also, Your Honor, I have to point it out

1 to you, since last year, he, at least, left the
2 country twice for business trip, and he knew he was
3 under investigation and with potential charges
4 against him. But he never -- he returned to the
5 country, to United States, and -- because he wanted
6 to defend himself. The allegations contained in the
7 information or complaint here is not entirely true.

8 And, Your Honor, you also heard in the
9 report -- in the letter address the Court by the --
10 by the government that told you about lots and lots
11 of documentations. Now, Your Honor, yes, the
12 pharmacies -- nine pharmacies or eleven pharmacies --
13 whatever the number, there are lots of
14 documentations. Your Honor, the only time for my
15 client can provide meaningful defense and effective
16 defense is to go through these documentations. And
17 he would be the only person to find, to locate the
18 documentations to defend himself.

19 Now, if he's incarcerated, that's almost
20 impossible for us -- for me to go to jail to meet him
21 with all these documentations he can search.

22 So, Your Honor, when we're balancing the
23 risks to flee and effective defense, I think he
24 should be released similar to the co-defendant, with
25 a similar conditions to co-defendant. And you

1 also -- Your Honor, I also have to get Court's
2 attention that the defendant health condition is not
3 that great. He suffers cholesterol, so he needs
4 constant medications. Now, who can do this better?
5 If he's home, he can receive medications. And if we
6 have -- if we have any problems, emergencies, he can
7 go to doctor's office, but that's another condition
8 I'm asking the Court to consider.

9 Now, as to the nature of the case, Your
10 Honor, this is not a violent case. It's not a
11 drug-involved violent case. It is white collar case,
12 you know, so there's no signs of any danger posed to
13 the society at whole. Government just talk about
14 that the -- allegedly, he said the defendant's --
15 similar conditions with the co-defendant and him,
16 right, contact the witnesses.

17 But, Your Honor, the government did not
18 really specify how they threat the witnesses. How --
19 what kind of violent, you know, acts? Is it, okay,
20 I'm going to killing you? I'm going to kill you if
21 you say something? Nothing being specifically
22 proffered here. And also, there's no time frame
23 where, when. So these are just allegations, Your
24 Honor. It's really something that can made up here.

25 Your Honor, I have to point it out to the

1 Court that those so-called witnesses, they were
2 either partners to the business or employees to the
3 business. There was no court order which restrict
4 them to contact those witnesses. When they contact
5 them, we do not know what the conversation is
6 exchanged. It could be their business, normal
7 business.

8 Now, even if these witnesses may have come
9 into court to testify or given some information to
10 the government, if my client ask what's the status,
11 you know, things like that, I thought they are all
12 legitimate. At least, the government has to provide
13 law, right, with what kind of language or specific
14 sentences or wordings exchanged between the
15 defendants and those witnesses.

16 So, Your Honor, I have to let the Court
17 know, I mean, the Court has to give very little
18 weight on those argument. And there's clearly no
19 indication they threaten those witnesses, you know,
20 if they give testimony to government or if they
21 should do something and they will do some violent
22 acts against those, I mean, witnesses.

23 In all fairness, Your Honor, I think the
24 Court, at least, should give defendant, Mr. Kim, the
25 same kind of treatment, same kind of bail conditions.

1 And we can offer a real property that is deed under
2 my client's name and his wife's name in Hawaii. And
3 I have the address if the Court is -- if the Court
4 would like to know what about this property to
5 bond -- as a security to that \$1 million bond the
6 government is searching for in the co-defendant case.
7 And all the other conditions, Your Honor, we'll agree
8 to as you outlined before.

9 THE COURT: Can I just ask you, Counsel,
10 what is the estimated value of the property in
11 Hawaii?

12 MR. TUNG: The estimated value of that
13 property is \$900,000, so it's close to \$1 million.
14 And if my client failed to show up in court, you
15 know, the -- it will be government's property. And
16 we can do similar signing over the deed before Friday
17 because it's under the name of the wife's name and
18 defendant's name.

19 MR. CAMPBELL: May I be heard, Your Honor?

20 THE COURT: Yes. Go ahead.

21 MR. CAMPBELL: Just to address some of these
22 points so the record is clear, the defendant was
23 never served with a grand jury testimony, nor was
24 he -- a grand jury subpoena, nor was he identified as
25 a target of the investigation. So whatever he

1 assumed was exactly that, his assumption. I think
2 it's fair to say that the circumstances have changed
3 now. He's been indicted and is facing three felony
4 counts with substantial guidelines estimate of
5 imprisonment should he be convicted.

6 The circumstances are just, frankly,
7 different than he's portraying them prior to being
8 indicted. And the heart of defense counsel's points
9 doesn't really address the concerns here. He alluded
10 to the fact that there are nine pharmacies that this
11 defendant is associated with or owns, yet none of
12 that was disclosed to Pretrial. At most, he says
13 that he had some past work experience as a manager of
14 the pharmacies. He hasn't disclosed any financial
15 assets. If it -- we take defense counsel at his word
16 that he had nine pharmacies, he has substantial
17 access to cash, which was a significant part of this
18 scheme.

19 And with respect to it not being a violent
20 case, while that's true, at this point, we're
21 permitted to proceed by proffer. We feel that the
22 threats and witness contacts are credible and have
23 been confirmed by multiple witnesses. If the Court
24 requests something more detailed, I'm happy to
25 provide it ex parte, but given the nature of the

1 message conveyed from the defendant to the individual
2 and protecting the individual's identity, I'm not
3 prepared to do that in open court.

4 THE COURT: But, Counsel, in your letter,
5 you have answered one of the concerns, which is
6 Mr. Tung said there was no time frame. Your letter
7 suggests that these contacts have been over the past
8 several months; is that true?

9 MR. CAMPBELL: That's correct.

10 THE COURT: Okay. And the witnesses have
11 indicated to the government that these were not
12 simply legitimate business discussions that they were
13 having with Mr. Kim, that they have told you, at
14 least, that they were being -- or he was attempting
15 to dissuade them from speaking with the government.
16 Is that a fair characterization of what your concerns
17 are?

18 MR. CAMPBELL: That is fair, Your Honor.

19 THE COURT: Okay. All right. Anything else
20 that you want to address at this point?

21 MR. CAMPBELL: Not for the government, Your
22 Honor.

23 THE COURT: Okay.

24 MR. TUNG: Your Honor, if government says
25 that my client has nine pharmacies or eleven

1 pharmacies and lots of pharmacy stores and -- that is
2 assets my client cannot move, and that's kind of
3 supporting our argument. His business is here in the
4 United States. He cannot take those business away.

5 But in the meantime, Your Honor, I just
6 heard from my client. He said all these pharmacy
7 stores are closed because of dramatic reduction in
8 business because of the investigation. When the
9 investigation started, employees got scared, left.
10 They cannot find replacement of employee who wants to
11 work for a pharmacy which is under government
12 investigations. And they lost customers because, as
13 far as they know, the other stores, they're still
14 doing the same. I mean, whatever the allegations
15 are, kickbacking. And their stores are not doing
16 this. So they don't have any business. That's
17 another good sign to indicate that our clients are
18 innocent in this -- in a sense.

19 And, Your Honor, when they're talking about
20 talking to the witnesses, I must stress, you know,
21 this -- those are business partners. Why can't they
22 talk about business? I mean, why can't they talk
23 about the status of the investigations and the
24 government allegations, I mean, proffered here is --
25 does not even meet the threshold. So I'm -- Your

1 Honor, and the complaint itself is addressed to both
2 defendants. Why one defendant shall be treated with
3 different conditions?

4 THE COURT: Well, were there any complaints
5 about Mr. Lu attempting to dissuade people from
6 discussing things with the government?

7 MR. CAMPBELL: Your Honor, as we put in our
8 letter, some of these contacts did come through
9 Mr. Lu. Our understanding from witnesses is that it
10 is at the direction of Mr. Kim. They have different
11 roles in the scheme. We see Mr. Kim as having more
12 of a controlling role in the scheme.

13 THE COURT: Well, okay, I guess what I'm
14 going to do is I'm going to order him detained. At
15 this time, I think there are substantial factors here
16 that lead me to conclude that he is a very serious
17 flight risk.

18 I understand your argument that his family
19 is all here in the United States, but he does have
20 ties to South Korea. He was planning on going there,
21 in fact. I do think that the circumstances that
22 existed when he left before and came back are
23 different. Now, he's facing 10- and 20-year maximum
24 sentences under these charges.

25 I'm concerned about the government's

1 statement that he transferred assets to his wife.
2 And I am very concerned about the attempts to
3 persuade witnesses not to discuss things with the
4 government, regardless of whether or not there was a
5 specific court order. So I'm going to order him
6 detained pending trial.

7 But that being said, you can always come
8 back to the Court if you want to make another effort
9 to come in with a more substantial package. With all
10 of the monies that the government alleges were
11 siphoned out of these pharmacies, the \$900,000
12 property in Hawaii is not -- simply not enough
13 security under any set of circumstances. So I'm
14 ordering him detained and --

15 MR. TUNG: Your Honor, can I be heard?

16 THE COURT: You can be heard.

17 MR. TUNG: Yes, I know you're not going to
18 change your mind, but I'm just asking, Your Honor,
19 government just said we can have a hearing on that
20 issue speaking to -- talking to co-defendants not to
21 speak with government, right? So that -- I think,
22 you know, these are business partners. If upon the
23 hearing, Your Honor, you -- after the hearing, if you
24 hear different testimony from the people who
25 allegedly threatened, maybe we can -- that will be

1 another consideration that the Court can reconsider
2 the bail condition. Otherwise, you know, I won't
3 come back unless there is a material change of the
4 circumstances. I wouldn't have anything else.

5 But the government says they can do a
6 hearing. I think it's fair for the defendant to be
7 entitled to that hearing to determine if he did
8 threaten, he did talking to them, not to talk to
9 government.

10 MR. CAMPBELL: Your Honor, I was not
11 requesting they were offering a hearing. I was
12 offering to provide additional information ex parte
13 should the Court want to hear it.

14 THE COURT: That's what I thought you were
15 saying. I don't think he was offering a hearing, and
16 I'm not sure that it's appropriate to have a hearing
17 at this point in time, but --

18 MR. TUNG: Your Honor, can the defendant
19 request in the near future such a hearing be
20 scheduled so we can determine if that's the
21 situation, that he contacted the co-defendants. And
22 in addition, Your Honor, you said if we can come back
23 with more securities -- I think -- I read the letter.
24 There's another property that was allegedly
25 transferred to his son in New York. Now, that

1 property, that's his residence.

2 Now, if I can talk to his family and they
3 are willing to put up a second real property, Your
4 Honor, would you consider -- reconsider in the
5 future, or would you consider now, if they're willing
6 to put up a second property, doubling -- maybe that
7 will be \$2 million now for the bond.

8 THE COURT: Well, given the nature of the
9 offense and the allegation that there was \$29 million
10 involved, I'm not sure that another \$1 million is
11 going to make me feel any better here. There's an
12 awful lot of cash, according to the government,
13 that's floating around right now.

14 Look, I am not about to tell you yes or no
15 if you come back with a specific property. All I'm
16 saying is, I'm giving you the right to come back, and
17 you can make your best bail pitch at that time. But
18 I'm not going to -- I'm not going to tell you what
19 will or will not satisfy the Court; okay?

20 MR. TUNG: Would you order a hearing, at
21 least, Your Honor, in near future, for that
22 allegations against my client for telling other
23 people not to be talk with --

24 THE COURT: I mean, if you want to insist on
25 this, I'll ask the government to submit something to

1 the Court in-camera. And if, upon review, it appears
2 that a hearing is appropriate, then we'll schedule a
3 hearing. But the first step would be to have the
4 government submit something with more detail to the
5 Court. If the Court determines that the proffer from
6 the government is sufficient without the need for a
7 hearing, then no hearing will be ordered.

8 MR. TUNG: That's fair, Your Honor.

9 THE COURT: Okay?

10 MR. TUNG: What's the deadline for the
11 government to provide that, the information?

12 THE COURT: Counsel, when can you get that
13 to the Court?

14 MR. CAMPBELL: Close of business tomorrow,
15 Your Honor.

16 THE COURT: Okay. That's fine.

17 MR. CAMPBELL: Just to be clear, Your Honor,
18 that's an in-camera ex parte submission?

19 THE COURT: Yes, it is.

20 MR. CAMPBELL: Thank you, Judge.

21 THE COURT: Okay. I, now, also have the
22 issue of an order of excludable delay. As I think it
23 was mentioned earlier, the defendants are to appear
24 before Judge Ross on June 12th. And I've been asked
25 to exclude time under the Speedy Trial Act for the

1 exchange of discovery, and I assume for plea
2 negotiations.

3 So, Mr. Schneider, have you discussed this
4 with Mr. Lu, your client?

5 MR. SCHNEIDER: Yes, I have, Your Honor.
6 Another reason is to allow Mr. Lu to seek counsel
7 (inaudible) sorry -- from Speedy Trial calculations.

8 THE COURT: All right. And, Mr. Tung, what
9 does your client wish to do?

10 MR. TUNG: Your Honor, since my previous
11 understanding, when I was reading the Pretrial
12 report, I thought that my client will be released
13 today. Now, of course, you know, we're not going to
14 consent to the time to be excluded. We want to have
15 a trial as soon as possible because he's detained.

16 MR. CAMPBELL: Your Honor, the government
17 feels the exclusion is appropriate in light of the
18 fact that discovery has not been produced. It will
19 need to be produced and reviewed. And the government
20 may engage in plea discussions with the defendant to
21 resolve the case short of trial pending the review of
22 discovery. So for those reasons, we would move over
23 their objection to exclude time.

24 THE COURT: I mean, you, yourself, argued
25 that there was a lot of paperwork and discovery that

1 you would need to look at in order to adequately
2 represent your client. I'm not quite sure why
3 excluding time for this short period is problematic,
4 but if you are refusing, I will order the exclusion
5 over your objection.

6 MR. TUNG: That's fine, Your Honor. All I'm
7 expressing that my concern is that he's retained --
8 he's detained.

9 THE COURT: And I understand that. And then
10 you have the option to come back to the Court, as I
11 indicated. But in the meantime, you're whittling
12 away the 70-day time period for trial. That's all
13 I'm saying. But if that's what you wish to do, I
14 will order it over your objection, and you can appeal
15 me to Judge Ross, okay?

16 All right. Anything else today?

17 MR. CAMPBELL: Not for the government, Your
18 Honor.

19 THE COURT: All right. Anything else,
20 Mr. Tung? Counsel?

21 MR. TUNG: No, Your Honor.

22 THE COURT: Mr. Schneider, Anything else?

23 MR. SCHNEIDER: No. Thank you.

24 THE COURT: All right. Thank you.

25 C E R T I F I C A T E

1
2 I, Adrienne M. Mignano, certify that the
3 foregoing transcript of proceedings in the case of
4 United States v. Taesung Kim and Dacheng Lu,
5 Docket #23CR191 was prepared using digital
6 transcription software and is a true and accurate
7 record of the proceedings.

8
9
10 Signature Adrienne M. Mignano
11 ADRIENNE M. MIGNANO, RPR
12

13 Date: May 2, 2023
14
15
16
17
18
19
20
21
22
23
24
25